IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 323 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MADHAVJI KHIMJI SHINGALA

Appearance:

1. Criminal Appeal No. 323 of 1991

MR A.J. DESAI, APP, for Petitioner

MR JM PANCHAL for Respondent No. 2

MR A.K. CHITNIS for Respondent No.1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.L.DAVE

Date of decision: 29/08/98

ORAL JUDGEMENT (Per A.L. Dave, J.)

1. On 16th August, 1990, Laxmiben, wife of Vikram Khimji, came to be murdered between 12.55 and 14.00 hours in her residential house bearing R.B.I. Quarter No.C-33,

near Subhash Bridge area of Ahmedabad. She was staying with her husband-Vikram Khimji, who happens to be appellant No.2 before this Court. The couple had two children, who had gone to school at that time. Accused No.2 is serving with Reserve Bank of India. On the day of the incident, he had gone to his office as usual, but at about 1.45 p.m. he sought leave from his superior for going to Regional Transport Office for obtaining form for his driving licence, against the recess time which he was permitted to do. After completing his work at the Regional Transport Office, he went to his home which is located just opposite the Regional Transport Office. He opened the front door of his flat with the help of the key to the latch and entered the house. To his shock and surprise, he found his wife-Laxmiben lying dead in a puddle of blood. He, therefore, immediately rushed to the Sabarmati Police Station and informed the police about the same. The police recorded this information, registered the offence and started investigation. During the course of investigation, the investigating agency found that there was evidence to connect accused No.2-Vikram Khimji and his brother, accused No.1-Madhavji Khimji with the offence in the nature of circumstantial evidence. The police, therefore, filed a charge sheet against the two of them charging that they had entered into a conspiracy to commit murder of Laxmiben and accused No.1 with the help of two other unidentified persons committed the murder of Laxmiben. The case was, ultimately, committed to the Court of Sessions and Additional City Sessions Judge, Ahmedabad proceeded with the trial against the accused persons. The accused persons pleaded not guilty and expressed their desire to face the trial.

2. After recording the evidence and considering the evidence on record, the learned Additional City Sessions Judge, by his judgment and order dated 22nd February, 1991, acquitted both the accused persons for the offences with which they were charged. Being aggrieved by the said judgment and order, the State has preferred this acquittal appeal against original accused Nos.1 and 2, who are present respondents No.1 and 2 herein.

3. Mr. A.J. Desai, learned Additional Public Prosecutor has taken us through the evidence adduced by the prosecution. He submitted that it is a case of circumstantial evidence wherein the near and dear ones of the deceased have conspired to do away with a helpless lady and have successfully done so. He submitted that the learned Trial Judge has committed an error in evaluating the evidence. The evidence of Vijay has not

been properly evaluated. If that was done, there was sufficient evidence at least to show that deceased was last seen in company of accused No.1 a few minutes before the incident occurred. Accused No.1 was accompanied by two unidentified persons. The learned trial Judge ought to have considered the evidence of Vijay along with the evidence of Dahyabhai, P.W.5-father of the deceased. If these two pieces of evidence were taken together, the doubt regarding identity of accused No.1 which was tried to be raised by the defence and accepted by the trial Court could have been removed. Mr. Desai further submitted that this is a case of a series of coincidents which normally cannot be expected to occur without there being a planning. Accused No.2 in a casual manner leaves his office by procuring a leave for going to Regional Transport Office, whereafter he does not return to office and, in fact, goes to his residence. Mr. Desai submitted that presence of accused No.1 is seen by witness-Ajay at the place of incident few minutes before the incident is noticed and it is only these two persons who have some motive for murdering the deceased. Mr. Desai has drawn our attention to a letter, admittedly, written by accused No.2 to his father-in-law, i.e. father of deceased-Laxmiben, which indicates that the relations between accused No.2 and the deceased were not normal. Of course, that letter indicates that accused No.2 was too tired of Laxmiben and he had threatened Dahyabhai of committing suicide. Mr. Desai urged that this frustration coupled with desire to live may have persuaded accused No.2 to change his stand from committing suicide to committing murder and this aspect is overlooked by the learned trial Judge. Mr. Desai urged that a helpless lady is done to death in a safe place called her home in broad day light. If the postmortem notes are seen, she has been caused a series of injuries and is, ultimately, brutally done to death with the help of an electric wire. Her ear lobes were cut off and therefore, the accused persons, who have been successfully connected with the offence by the prosecution, ought to have been convicted by the learned trial Judge. Mr. Desai, therefore, urged that the appeal may be allowed setting aside the order of acquittal and the accused persons - respondents may be convicted for the offence with which they are charged.

4. We have heard learned advocates Mr. Panchal and Mr. Chitnis appearing for the respondents. According to the respondents, there is no dispute that Laxmiben was murdered. The question is whether the prosecution is able to establish that the respondents are the authors of the offence. The respondents have come with a case that

there is no evidence whatsoever brought on record to establish the alleged conspiracy between the two accused persons. Presence of accused No.2 at the scene of offence is not established at all. The evidence led by the prosecution to establish presence of accused No.1 at the place of offence a few minutes prior to the noticing of the crime is scanty and doubtful and the learned trial Judge has rightly rejected that piece of evidence. The only evidence is that of witness-Vijay, who is not able to identify accused No.1 as the person whom he had seen at about 12.55 a.m. on the date of the incident and, therefore, the conclusion of the trial Court that the prosecution has not established the unbroken chain of circumstances to connect the accused with the offence deserves no interference.

4.1 It is urged on behalf of the respondents that the trial Court has considered the evidence in its proper perspective and has considered all the circumstances brought on record by the prosecution to prove the case against the accused persons. It could not have been overlooked that there was no injury on person on any of the accused persons as against medical evidence that there were as may as 25 injuries on person of the deceased and some of which were defence injuries to indicate that there must have been opposition, struggle and scuffle between the deceased and the assailants and, therefore, it would be reasonable to expect some injury on person of the assailant. The finding of blood stains on the T-shirt of accused No.1 and his shoes have been properly explained by the defence from the evidence of the prosecution itself. Besides this, when there is no evidence to indicate any conspiracy between accused No.1 and accused No.2 and in absence of any material to indicate motive for accused No.1 to murder Laxmiben, the accused could not have been convicted by the learned trial Judge, as has been done.

4.2 On behalf of the respondents, it was also argued that the investigation has not been properly done. Although blood stained cloth and shoes of accused No.1 were seized by police on 16th August, 1990 and although statement of witness-Vijay was recorded on the same day, accused No.1 was arrested only on 18th August, 1990. The Investigating Officer has not come out with any case that he was exploring for any other cogent evidence to connect accused No.1 with the offence or that during the period between 16th and 18th August, 1990, he got some evidence to connect accused No.1 with the offence. If it was only the blood stained cloth and shoes that was sufficient to connect accused No.1 with the offence according to the

Investigating Officer, why did he not arrest accused No.1 on the same day? No explanation is tendered for late arrest. It is also urged that, if the evidence is properly perused, it is clear that it is a case of robbery with murder. A small piece of bangle is found to be lying on the scene of offence under the furniture. A small piece of gold chain was found entangled in the hair of the deceased and the remaining portion of the bangle as well as the gold chain are missing. It is also found that the lock to the locker was attempted to be broken open and some of the levers to the lock were successfully broken. In spite of this, the police authority has not booked an offence for robbery. It was, therefore, urged that the trial Court has considered all these aspects in its correct perspective. An unbroken chain of circumstances to connect the accused with the offence has not been established by the prosecution. The appellant-State has not been able to show that the decision arrived at by the trial Court is perverse or palpably illegal and demonstrably erroneous. It is not show by the appellant that no other view except the guilt of the accused was possible to arrive at by the trial Court and, therefore, it is urged that, according to the settled principles, this Court need not interfere with the verdict of acquittal recorded by the trial Court.

5. Now, coming to the merits, it may be recorded at the outset that the case before us is that of circumstantial evidence. There is no direct evidence to establish nexus between the accused and the offence and it will, therefore, have to be examined whether prosecution has been able to establish the unbroken chain of circumstances connecting the accused with the offence.

6. The evidence indicates that accused No.2 went to his home at about 2.30 p.m. on the day of incident, i.e. on 16th August, 1990. He opened the latch with the help of his key and entered the house. He found that his wife Laxmiben was lying dead in a puddle of blood. He, therefore, immediately rushed to the police and lodged the F.I.R. Thus, there is no direct evidence. The prosecution has attempted to establish nexus by examining witness-Vijaykumar, P.W.3, Ex.13. He is the son of a neighbour and it is case of the prosecution that at about 12.55 p.m., he came to the house of the deceased and accused No.2, knocked the door. The door was opened by some unknown person. Witness-Vijay, therefore, inquired about Laxmiben. Upon hearing him, Laxmiben came and handed him over the key of his house. Vijay, therefore, left for his house located on the next floor. Vijay says that, he notice "Madhukaka" having snacks in the house of

Laxmiben. He also noticed two other persons whom he had earlier never seen. He says that he knew Madhukaka because he was uncle of Nirmal, son of deceased Laxmiben and accused No.2. On being asked to identify in the Court, he says that he is not sure whether accused No.1 was the same Madhukaka whom he had seen on the date of the incident because Madhukaka used to sport a beard. Barring this piece of evidence in the nature of deposition of Vijaykumar, P.W. 3, there is no other evidence written or oral to indicate that accused No.1 was present at the place of incident on or around the time of the incident. It, therefore, cannot be said that this witness specifically and unimpeachably establishes presence of accused No.1 at the place of incident around the time of the incident.

6.1 However, an attempt is made to show that this evidence should be read with the evidence or witness of Dahyabhai, P.W.5, Ex.23. Dahyabhai is the father of deceased-Laxmiben. He, in his deposition, states that accused No.1 used to sport beard earlier but has stopped sporting the same of late. It was argued by the learned Additional Public Prosecutor that this piece of evidence and the evidence of Vijay, if read together, would indicate that accused No.1 was present at the place of incident. It is difficult to accept this argument on behalf of the appellant for the reason that it is only witness-Vijay, who had seen the person who was present at the place of incident few minutes prior to the noticing of the incident and simply because accused No.1 is said to have been earlier sporting a beard, it cannot be said that witness-Vijay has identified the accused. Possibility of coincidence has to be ruled out by concrete evidence by prosecution in such cases where the whole case hangs on such weak, scanty and vulnerable evidence.

6.2 Another circumstance, which is shown by the prosecution to connect accused No.1 with the offence is undisputed factum of blood stained T-shirt and shoes. In this regard, evidence of witness-Ramaben, P.W.4, is important. She is examined at Ex.14 and during cross-examination, she states that accused No.1 regarded deceased-Laxmiben as his mother. She says that when she was called as a Panch, both the accused persons were weeping. Accused No.1 had clung to the deceased while weeping. It is, therefore, suggested by the defence that the deceased was badly injured and was bleeding profusely. The T-shirt could have been stained with the blood of the deceased while accused No.1 had clung to her weeping. This explanation appears to be quite plausible.

As regards blood stains on the shoes of accused No.1, it is argued that the accused had gone to the place. The place of offence, as can be seen from the place of Panchnama, was stained with blood. The lady was murdered in one room and dragged to other room and there was a streak of blood caused by pulling of the dead body. It is also on record that accused No.1 had physically helped in taking the dead body for postmortem and putting it in the Ambulance. The deceased had sustained number of injuries. Both her ear lobes were severed. This must have caused profuse bleeding and, therefore, in this process, the shoes of accused No.1 might have been stained with blood of the deceased. The explanation tendered by the defence from the evidence of the prosecution appear to be reasonable and possible and, therefore, that circumstance cannot be used against accused No.1. The result is that accused No.1 cannot be said to have been connected with the offence by the prosecution evidence. The evidence of Ramaben also establishes the factor that accused No.1 could not have any motive to murder Laxmiben because she states that accused No.1 regarded Laxmiben as his mother.

7. Barring the factor that accused No.2 had left his office at about 1.45 p.m. on the date of the incident, the prosecution has not been able to bringforth any evidence or even a circumstance to indicate conspiracy that is alleged to have been hatched by the two accused persons and, therefore, that charge also could not have been upheld by the trial Court.

8. When the charge of conspiracy cannot be upheld, when the charge of possibility of accused No.1 having committed murder of deceased-Laxmiben in furtherance of the conspiracy is not established, and when the charge of accused No.1 having committed the murder of deceased-Laxmiben with the help of two unidentified persons is not established by the prosecution, it cannot be said that the trial Court has committed an error least an apparent or palpable error in evaluating the evidence.

9. It also cannot be overlooked that, admittedly, dog squad was called for. The prosecution has not brought on record the outcome of investigation by the dog squad. Likewise the finger prints found at the place of offence were taken. But what was the result of that investigation is not brought to the notice of the Court and, therefore also, it cannot be said that the prosecution was able to establish the case against the accused persons - respondents - beyond reasonable doubt by the stray pieces of evidence that were led by the

prosecution.

10. One factor that requires to be considered is that, admittedly, there were as many as 25 injuries on person of the deceased. Many of them were superficial. The death was caused by strangulation. Some injuries are defence injuries and, therefore, there must have been some resistance by the deceased resulting into struggle or scuffle between the deceased and the assailants. Surprisingly, in a thickly populated area like R.B.I. quarters, no evidence is collected by the investigating agency as to whether some unusual incident or happening was noticed by the neighbours or not. On the other hand, when the accused persons were arrested, they did not have any injury recent or old, on their persons, which rules out the possibility of their involvement in the offence.

11. It is, therefore, amply clear from the above discussion that the prosecution cannot be said to have established the guilt of the accused beyond reasonable doubt. It has failed to establish unbroken chain of circumstances to connect the accused persons on one end and the offence at the other. It cannot, therefore, be said that the trial Court was in gross error in evaluating the evidence and that there was no possibility for taking a view other than guilt of the accused. This Court, therefore, while deciding an acquittal appeal cannot exercise its jurisdiction and entertain the appeal to establish the guilt of the accused. The appeal is, therefore, devoid of merits and it deserves to be dismissed. Hence, this appeal is dismissed. We hereby confirm the judgment and order of the trial Court passed in Sessions Case No.306 of 1990 on 22.1.1991. The bail bonds of the respondents will stand cancelled.

[J.N. BHATT, J.]

[A.L. DAVE, J.]

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